IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18011 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEHSANADISTRICTCOOP.PURCHASESALESANGHLTD. - Petitioner(s)

Versus

KARSANBHAIMOHANLALPRAJAPATI & 1 - Respondent(s)

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Appearance :

MR GM JOSHI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 2.
MR MEHUL SHARAD SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/10/2005

ORAL JUDGMENT

In the present petition, the petitioner-employer has challenged the legality of the award dated 25.7.2003 passed by the Labour Court by which the Labour Court was

pleased to partially allow the reference of the respondent-workman. The termination of service of the respondent brought about on 14.11.1992 was declared as illegal. However, considering the fact that according to the Labour Court the respondent had already crossed the age of superannuation on 19.7.97, the Labour Court provided that the workman will be entitled to salary for the period between 14.11.92 to 19.7.97 to the extent of 70 per cent.

2. From the perusal of the award of the Labour Court, it can be seen that the respondent could not remain present for duty since he had met with an accident on 29.4.91. He had also sent a certificate in this regard to the employer. He had also prayed for leave for the period between 30th April 1991 to 30th June 1991. The respondent also produced his fitness certificate dated 15.10.91 issued by his doctor. Along with the certificate of the Civil Surgeon dated 18.10.91, he reported for duty. On account of these factors, the Labour Court found that termination of the respondent by the petitioner was not justified. The Labour Court did not accept the contention of the petitioner that on account of the respondent not reporting for duty upon his

transfer thereafter, the termination was justified. I find that the view of the Labour Court is eminently just and calls for no interference. The Labour Court has passed order on the available material on record and not committed any jurisdictional error in so far as the termination was declared as illegal. No interference is therefore called for.

3. Learned advocate Shri Joshi for the petitioner, however, submitted that the age of superannuation applicable to the respondent would be 58 years whereas the Labour Court granted the benefits to the respondent upto 19.7.97 i.e. till he reached the age of 60 years. At least to that extent, according to the learned advocate Shri Joshi, the award of the Labour Court is required to be modified. Learned advocate Shri Shah appearing for the respondent-workman submitted that there was no material before the Labour Court one way or the other to conclude the age of superannuation. However, since the Labour Court has granted substantial benefits to the workman, the respondent would not agitate the question regarding the correct age of superannuation.

4. In view of the above discussion, I find that though

the declaration of the Labour Court regarding the validity of the termination need not be interfered with, the consequential direction for payment of 70 percent backwages, etc. needs to be curtailed till the respondent crossed the age of 58 years which would be 19.7.95. Consequently, the award of the Labour Court is modified to the above extent holding that the respondent would receive 70 per cent of back-wages between 14.11.92 to 19.7.1995. With this modification, the petition is disposed of making the rule made absolute to the above extent. Under the award whatever the deficient amount is required to be paid to the respondent shall be paid within four weeks from the date of receipt of a copy of this order. Backwages and other terminal benefits be calculated accordingly and if not yet fully paid, pay over to the respondent.

5. Learned advocates appearing for the parties jointly submit that pursuant to the order dated 12.2.04, the petitioner has deposited certain amounts before this Court. The amount deposited by the petitioner and invested in the fixed deposit by the Registry shall be paid to the respondent-workman by account payee cheque. The amount received by the respondent-workman shall be

given credit to by the petitioner while calculating the entire amount.

(Akil Kureshi, J.)

(vjn)